

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



January 2, 1998

ALL COUNTY LETTER 98-01

**TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS****REASON FOR THIS TRANSMITTAL**

- ☐ State Law Change
- ☒ Federal Law or Regulation Change
- ☐ Court Order
- ☒ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

SUBJECT: IMPACT OF FEDERAL AND STATE WELFARE REFORM ON THE AID TO FAMILIES WITH DEPENDENT CHILDREN-FOSTER CARE (AFDC-FC) PROGRAM**SUPERSEDES: ALL COUNTY LETTER (ACL) 94-75, QUESTIONS 28 AND 35
AND ALL COUNTY INFORMATION NOTICE (ACIN) I-06-93**

The purpose of this ACL is to provide counties with information and instruction concerning the impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Administration for Children and Families - Children's Bureau (ACF-CB), Policy Interpretation Question (PIQ) 96-02, ACF-CB Program Instruction (PI) 97-01, and State welfare reform on eligibility requirements for federal Title IV-E and State foster care benefits.

BACKGROUND

Title IV-E of the Social Security Act provides for the federal Foster Care and Adoption Assistance Programs. Prior to the passage of PRWORA, federal foster care funds could be claimed for the costs of out-of-home board and care if a child was in receipt of AFDC benefits, or would have been eligible for same had an application been made, in the month the petition to remove the child was filed. In addition, a child's eligibility for State foster care and continuing federal benefits were based in large part on AFDC eligibility requirements.

Prior to PRWORA, the California Department of Social Services (CDSS) obtained several federal waivers to AFDC Program rules pursuant to Section 1115(a) of the Social Security Act. These federal waivers enabled the State to reform key aspects of California's AFDC Program. These reforms included but were not limited to changes in income and property rules under the Assistance Payments Demonstration Project/California Work Pays Demonstration Project.

In 1996, PRWORA eliminated the decades-old AFDC entitlement program and replaced it with the Temporary Assistance for Needy Families (TANF) block grant program. PRWORA also amended Title IV-E of the Social Security Act. These amendments affect both linking and nonlinking eligibility requirements in the AFDC-FC Program.

California replaced the “old” AFDC Program with the AFDC/TANF Program effective November 26, 1996. The AFDC/TANF Program in California is in most respects identical to the AFDC Program it replaced.

Effective January 1, 1998, the CalWORKS Program begins to replace the AFDC/TANF Program in California. CalWORKS will have different requirements than those of the current AFDC/TANF Program. Principal among those differences are time limits, work requirements, and income and property requirements.

FOSTER CARE ELIGIBILITY STANDARDS

Effective July 1, 1997, eligibility for federal Title IV-E and State foster care benefits under the AFDC-FC Program must be determined using the AFDC eligibility standards that were in effect on July 16, 1996.

In addition, no AFDC waivers in effect on that date may be applied when determining eligibility for foster care or adoption assistance benefits.

Therefore, a redetermination of AFDC linkage based on the requirements outlined in this ACL must be completed for each federal foster care case opened since July 1, 1997, at the next semi-annual redetermination of eligibility. For other continuing cases and all cases opening after receipt of this ACL, the provisions of this ACL apply at both initial determination and subsequent redeterminations of eligibility.

As noted, PRWORA eliminated the AFDC Program. Nevertheless, PRWORA continues to require that eligibility for Title IV-E funds be based on whether a child meets the old AFDC deprivation and approved AFDC State Plan requirements in effect on July 16, 1996. The sole exception to this rule concerns citizenship and alien status which is discussed below.

As you may know, the original “look back” date identified in PRWORA was June 1, 1995. However, recent legislation changed that date to July 16, 1996, for Title IV-E purposes. One section of Title IV-E, Section 470 (42 US Code 670), was overlooked and maintains the original look back date of June 1, 1995, but this is merely an oversight and does not affect the new look back date of July 16, 1996. Accordingly, counties must ensure that children removed on or after July 1, 1997, meet the linking and non-linking AFDC program requirements as they existed on July 16, 1996, excluding AFDC waivers, to avoid potential audit disallowances.

These changes affect both program standards and administrative activities related to eligibility determinations in the AFDC-FC Program. Each is discussed in this ACL.

AFDC WAIVERS AND PIQ 96-02

In PIQ 96-02, issued December 12, 1996, the federal Department of Health and Human Services clearly states that Section 1115(a) waivers shall not be applied in making Title IV-E eligibility determinations. Accordingly, **the counties must ensure that no AFDC waiver provisions are applied when determining initial and continuing eligibility for foster care and adoption benefits.** This ACL supersedes ACIN I-06-93 and ACL 94-75, questions 28 and 35.

Although the Section 1115(a) waivers affected income and property rules among other eligibility factors in the AFDC Program, the Foster Care Branch does not anticipate a significant impact on foster care eligibility. These eligibility factors and requirements are discussed below.

Congress reportedly has considered an amendment to PRWORA that would permit the application of Title IV-A waivers to the IV-E Program. Until or unless such an amendment is adopted, AFDC Section 1115(a) waivers must not be applied when making foster care eligibility determinations.

DETERMINING FOSTER CARE ELIGIBILITY UNDER AFDC/TANF

Foster Care eligibility requirements that are not based on the AFDC Program were not affected by PRWORA or State welfare reform. These include:

- ▶ Redetermination of Eligibility Requirements (Eligibility and Assistance Standards [EAS] 45-201.7)
- ▶ Services Requirements (EAS 45-201.4)
- ▶ Fundamental Linkage Requirements (EAS 45-202.3)
- ▶ Authority for Placement Requirements (EAS 45-202.4 and EAS 45-203..3)
- ▶ Eligible Facility Requirements (EAS 45-202.5 and EAS 45-203.4)
- ▶ All of EAS Chapter 45-300

Most of the eligibility requirements in the current AFDC/TANF Program are identical to those of the AFDC Program as it existed on July 16, 1996. Therefore, the requirements cited below continue to apply to the current AFDC/TANF and Foster Care Programs in California.

- ▶ Age (EAS 45-201.11 and 42-100)
- ▶ Applicant Property Limits (EAS 45-201.12 and 42-200)

- ▶ Residence (EAS 45-201 and 42-400)
- ▶ Social Security Numbers (EAS 45-201.15 and 40-105.24)
- ▶ Exemptions from Income -- Independent Living Program (EAS 45-201.161 and 44-111.261)
- ▶ Application Requirements (EAS 45-201.5 and EAS 40-100)
- ▶ Deprivation due to death, incapacity, or absence (EAS 45-202.1 and 45-203.1)

However, some AFDC/TANF requirements in California are different from those of the AFDC Program as it existed on July 16, 1996, due to the AFDC demonstration projects now incorporated under the AFDC/TANF program and other changes which occurred pursuant to PRWORA. Demonstration projects incorporated under TANF include: Assistance Payments Demonstration Project/California Work Pays Demonstration Project (APDP/CWPDP); Empowerment Zones/Enterprise Community (Oakland); San Diego School Attendance; Automated Fingerprint Image Reporting and Match (Los Angeles County); Eligibility Simplification Project, and; Parents' Fair Share (Los Angeles County). Only the APDP/CWPDP contained waivers which could have directly affected the foster care program.

Accordingly, counties may use current AFDC/TANF eligibility standards for initial and subsequent redeterminations of State and federal AFDC-FC eligibility, but **must complete and document separate eligibility determinations for each AFDC/TANF eligibility requirement which does not reflect the AFDC Program in effect on July 16, 1996, absent Section 1115(a) waivers.** Once those determinations are completed for each of the divergent program requirements discussed below, this information must be reflected on the FC 2 (Statement of Facts Supporting Eligibility for AFDC-FC), FC 3 or case notes as appropriate. Specifically, when completing question three on the FC 3, counties must use July 16, 1996, eligibility factors, excluding waivers, to determine whether the child would have been eligible for AFDC in the petition month and whether the child continues to be eligible at redeterminations.

The following divergent eligibility standards must be addressed:

- ▶ Recipient Property Limits:

Counties may not apply the recipient property limits associated with APDP/CWPDP (\$2000 personal resources, \$4500 vehicle, \$5000 restricted accounts) to foster children or their families when determining initial eligibility or at redeterminations. As a reminder it should be noted that cash savings accrued pursuant to an Independent Living Program (ILP) Plan have long been exempt from property requirements. As noted above, the instructions contained in ACL 94-75, question 35, are superseded by this ACL.

► Income Standards:

The Minimum Basic Standard of Adequate Care (MBSAC) and the 185 percent Income Test based on the MBSAC have increased since July 16, 1996, so current MBSAC limits are higher than those allowed to establish federal foster care eligibility. Therefore, amounts in effect as of July 16, 1996, must be used to establish linkage for foster care purposes. The MBSAC and 185 percent of MBSAC as of July 16, 1996, are listed in Attachment A to this ACL.

► 100 Hour Rule:

The 100-hour work rule was waived in the AFDC Program for recipients as of December 12, 1992. However, this rule must be used for AFDC-FC initial determinations and redeterminations when deprivation is based on unemployment. As noted above, the instructions contained in ACIN I-04-93 and ACL 94-75, question 28, are superseded by this ACL.

► \$30 and 1/3 Income Disregard Time Limit:

The four-month time limit on the \$30 and 1/3 Income Disregard as defined in EAS 44-111.23 was waived effective September 1, 1993. For purposes of AFDC-FC eligibility, the four-month time limit still applies when making initial AFDC linkage determinations.

► Maximum Family Grant: Target Implementation Date of September 1, 1997.

This new provision will not apply to the AFDC-FC Program. This provision will not allow additional children born into a TANF household to be added to the assistance unit under specified conditions. Again, this provision may not be considered when making eligibility determinations for foster children or their families.

► Maximum Aid Payment (MAP):

Multiple changes in the MAP have occurred since July 1, 1992, as a result of waivers, State legislation, and court cases. The July 1992 MAP limits that would have been in place absent waivers as of July 16, 1996, are included for your information only.

Lastly, because PRWORA changed some citizenship and alienage requirements, counties must also note the following:

► Citizenship and Alienage:

The citizenship and alienage provisions of PRWORA will affect AFDC-FC eligibility. However, it is not clear what that effect will be at this time. Therefore, counties are

instructed to identify and "flag" cases which may be affected by the citizenship provisions of PRWORA for review at redeterminations. **These include any cases in which the child or provider is not a citizen or verified resident alien.** The CDSS is currently analyzing this issue and will apprise counties of additional required actions at the earliest possible date.

LINKAGE DETERMINATIONS UNDER AFDC/TANF

As noted, prior to the passage of PRWORA, children in receipt of AFDC benefits in the home of removal in the month the petition for removal was filed were considered automatically linked to the federal Foster Care Program. The child's AFDC case number was recorded in the foster care income maintenance file to document eligibility for federal foster care benefits. If children were not in receipt of AFDC in the month of petition, a "would have been eligible" determination based on the Preponderance of Evidence Model (POEM) described in ACL 94-15 was required. With the implementation of PRWORA, a change in the manner by which linkage is determined becomes necessary and is discussed below.

Receipt of AFDC/TANF with Supporting Verification and Documents

The current AFDC/TANF Program in California mirrors the old AFDC Program as it pertains to most eligibility requirements. Accordingly, receipt of AFDC/TANF benefits will continue to demonstrate that the child and family meet certain linkage requirements such as age and residence. The child's AFDC/TANF case number must be recorded in the foster care income maintenance file to document that these conditions of eligibility are met. Specifically, the child's AFDC/TANF case number must be recorded on the FC 3 (Determination of AFDC-FC Eligibility) in the verification section next to question three. Counties should continue any current practice of including a MEDS screen print or AFDC/TANF payroll record in the file.

However, the counties must complete and document separate eligibility determinations for those AFDC/TANF requirements cited above which do not reflect the AFDC Program requirements in effect on July 16, 1996, absent Section 1115(a) waivers. Again, this information must be reflected on the FC 2 (Statement of Facts Supporting Eligibility for AFDC-FC), FC 3 or case notes as appropriate. Specifically, when completing question three on the FC 3, counties must use July 16, 1996, eligibility factors to determine whether the child would have been eligible for AFDC in the petition month.

For children not in receipt of AFDC/TANF in the petition month, a "would have been eligible" determination based on POEM as described in ACL 94-15 must be used to establish federal foster care linkage. The AFDC eligibility standards and requirements of July 16, 1996, excluding waivers, not current AFDC/TANF requirements, must be used when determining eligibility for foster care benefits.

DETERMINING FOSTER CARE ELIGIBILITY UNDER CALWORKS

As noted, the CalWORKS Program begins to replace the AFDC/TANF Program in California effective January 1, 1998. CalWORKS requirements will differ from those of the current California AFDC/TANF Program.

When determining eligibility for AFDC-FC benefits after the implementation of CalWORKS, **counties must use the AFDC Program requirements in effect on July 16, 1996, excluding AFDC waivers, as discussed above under “Determining Foster Care Eligibility Under AFDC/TANF.”**

Because the Foster Care Program continues to be linked to AFDC rules as they existed on July 16, 1996, counties must not use the new CalWORKS rules in determining eligibility for AFDC-FC benefits.

LINKAGE DETERMINATIONS UNDER CALWORKS

It is not known at this time exactly how CalWORKS requirements will diverge from the AFDC rules in place on July 16, 1996. Therefore, counties are directed to complete **a POEM linkage determination for all children entering foster care after the implementation of CalWORKS until new foster care regulations are promulgated.** If children are in receipt of CalWORKS benefits during the month of petition, counties should also record the child's CalWORKS case number in the foster care income maintenance file; the child's CalWORKS case number is to be recorded on the FC 3 in the verification section next to question three. This documentation will help to establish a “supportive case record” as required for POEM linkage determinations. Counties are encouraged to continue any current practice of including a MEDS screen print or CalWORKS payroll record in the file.

For your information, the principal differences between CalWORKS requirements and those of the AFDC Program in effect on July 16, 1996, are described below. Please also note that foster children in receipt of CalWORKS (rather than foster care) benefits will be exempt from the time limit and work requirements of CalWORKS.

- ▶ **Income:** Income requirements for foster care eligibility will continue to be based on those in effect for AFDC on July 16, 1996. Under CalWORKS, “income shall be deemed to be the same as applied under the Aid to Families with Dependent Children program on August 21, 1996, except that income that is received too infrequently to be reasonably anticipated as exempted in federal food stamp regulations shall be exempted from consideration” [Welfare and Institutions Code (WIC) 11157(b)].
- ▶ **Income Disregards:** Income disregards for foster care eligibility will continue to be based on those in effect for AFDC on July 16, 1996 as discussed above. Under CalWORKS, a \$225 income disregard is first applied to disability-based income. If disability based-income is less than \$225, the remainder of the \$225 disregard is applied to earned

income. Fifty percent of any remaining earned income is disregarded. Disability-based income in excess of \$225 is deducted dollar for dollar from the MAP as is all other unearned income.

- ▶ **Property:** Property requirements for foster care eligibility will continue to be based on those in effect for AFDC on July 16, 1996. Under CalWORKS, “an applicant or recipient ... may retain countable resources in an amount equal to the amount permitted under federal law for qualification for food stamps” (WIC 11155).
- ▶ **Deprivation:** Deprivation requirements for foster care eligibility will continue to be based on those in effect for AFDC on July 16, 1996. Under CalWORKS, requirements for absent parent, death and incapacity deprivation remain unchanged. For unemployed parent deprivation, CalWORKS eliminates the “look back” to identify employment during a specified number of quarters within the prior four years. The 30-day unemployment requirement is decreased to four weeks. The 100-hour rule is retained for applicants.

CalWORKS requirements will undoubtedly continue to change after implementation. Again, Counties must not apply any new CalWORKS requirements when determining eligibility for foster care benefits.

ADMINISTRATION

The CDSS recognizes that the changes in federal linkage and eligibility requirements imposed by PRWORA will increase administrative activities and responsibilities for the counties and the State. The DHHS, in its recent PI 97-01, acknowledged this burden in writing that “States may face the administrative burden of having to conduct multiple eligibility determinations where one once sufficed.” As in the past, allowable administrative costs relating to eligibility determinations will be eligible for federal reimbursement in accordance with 45 Code of Federal Regulations 1356.60.

STATEWIDE AUTOMATED WELFARE SYSTEM (SAWS)

Those counties which are currently online with SAWS may need to create work-arounds in order to ensure the continued use of the July 16, 1996, AFDC eligibility factors, excluding Section 1115(a) waivers. The CDSS is currently analyzing the possible changes to SAWS and will submit maintenance change requests to SAWS as appropriate.

AMENDMENTS TO THE STATE PLAN AND REGULATIONS

The CDSS is currently amending the Title IV-E State Plan to reflect the new requirements mandated by PRWORA, PI 97-01, and PIQ 96-02. The CDSS is also amending the foster care regulations to incorporate all relevant AFDC regulations in effect on July 16, 1996.

Until such time as regulations can be issued, **the counties are instructed to maintain their current AFDC regulations separate from the new CalWORKS regulations soon to be issued.**

The CDSS further anticipates continuing program changes as Welfare Reform is implemented in California. The Foster Care Branch will keep you informed of changes which affect the Foster Care Program as they become known.

If you have questions pertaining to the AFDC-FC Program or this ACL, please contact your Foster Care Consultant at (916) 323-1263.

Sincerely,

A handwritten signature in cursive script that reads "Marjorie Kelly".

MARJORIE KELLY
Deputy Director
Children and Family Services Division

c: CWDA

Attachment

Attachment A
MBSAC, 185% of MBSAC, and MAP levels as of July 16, 1996

MBSAC

Assistance Unit Size	MBSAC	Assistance Unit Size	MBSAC
1	\$355	7	\$1,209
2	\$583	8	\$1,317
3	\$723	9	\$1,428
4	\$858	10	\$1,551
5	\$979	More than 10	Add \$14/extra person
6	\$1,101		

185% of MBSAC

Assistance Unit Size	185% of MBSAC	Assistance Unit Size	185% of MBSAC
1	656	6	2,036
2	1,078	7	2,236
3	1,337	8	2,436
4	1,587	9	2,641
5	1,811	10	2,869

MAP

Assistance Unit Size	Maximum Aid Payment	Assistance Unit Size	Maximum Aid Payment
1	\$326	6	\$1,010
2	\$535	7	\$1,109
3	\$663	8	\$1,209
4	\$788	9	\$1,306
5	\$899	10+	\$1,403